

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling)	WC Docket No. 12-375
Services)	

**PAY TEL COMMUNICATIONS, INC.
RESPONSE TO SUBMISSIONS OF DARRELL A. BAKER AND
THE ALABAMA PUBLIC SERVICE COMMISSION**

Pay Tel Communications, Inc., (“Pay Tel”), by its attorneys, respectfully submits this response pursuant to the Order released by the Wireline Competition Bureau on September 21, 2015 in the above-referenced docket¹ regarding the inadvertent disclosure of ICS providers’ confidential data by Darrell A. Baker of the Alabama Public Service Commission.²

Pay Tel was among the ICS providers whose proprietary data contained in a filing dated July 8, 2015 and authored by Mr. Baker, Director of the Alabama PSC’s Utilities Division, was posted publicly on July 9, 2015 for a three-hour period on the Commission’s website.³ Pay Tel agrees with the Commission’s conclusion Mr. Baker’s filing was not made in accordance with the procedures prescribed in the Protective Order issued in this proceeding governing the protection of confidential information.⁴ For the following reasons, however, as regards Pay Tel’s confidential data, Pay Tel believes that the penalties the Commission has imposed on Mr. Baker and the

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 15-1052 (Sept. 21, 2015) (“Sept. 21 Order”).

² *Id.* at ¶¶ 3-4.

³ See Darrell A. Baker, Notice of Ex Parte Presentation, WC Docket No. 12-375 (dated July 8, 2015; posted July 22, 2015) (public, redacted version) (explaining that Baker relied for his analysis on cost data submitted by Pay Tel and six other ICS providers).

⁴ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, DA 13-2434 (Dec. 19, 2013) (“Protective Order”).

Alabama PSC are sufficient, especially when coupled with the actions that the Alabama PSC has already taken on its own since the disclosure to address issues related thereto.⁵

First, the release of confidential information in this instance was limited, both in terms of time (three hours)⁶ and scope (Mr. Baker contends his disclosure did not provide any information on a facility-specific level and that his disclosure did not reveal providers' particular cost elements).⁷ Second, it appears that Mr. Baker has acted in good faith with respect to his use of the information in question and that, when apprised of the problem with his filing, he took appropriate steps to rectify the situation such that the inadvertent disclosure was limited in nature. GTL's claim that Mr. Baker acted with "indifference" to the event⁸ is not supported by the facts. To the contrary, it appears that Mr. Baker acted promptly to address the situation when apprised of the problem. It is not clear what other actions could or should have been taken. Third, there is no indication Mr. Baker's failure to abide by the appropriate procedures has harmed any of the companies whose data was released or has led to the further public dissemination of protected information. Finally, Mr. Baker is a public official who has made valuable contributions to this proceeding by articulating a strong voice for the interests of state regulators, participating in a

⁵ Sept. 21 Order, at ¶ 7. *See also* Alabama Public Service Commission, Response, at 3, WC Docket No. 12-375 (Sept. 24, 2015) (explaining measures taken to ensure no future violations).

⁶ *Id.* at ¶ 4.

⁷ *See* Email from Darrell Baker, Director, Utilities Division, Alabama Public Service Commission, to Lynne Engledow, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau, WC Docket No. 12-375 (Sept. 22, 2015). It does appear that Mr. Baker took steps in his filing to "anonymize" the use of confidential data (e.g., by not referring to specific providers by name but rather by generic indicators such as "Jails Provider A"). *See* Darrell A. Baker, Notice of Ex Parte Presentation, WC Docket No. 12-375 (dated July 8, 2015; posted July 22, 2015) (public, redacted version). *See also* GTL's Motion for Sanctions, Collins Declaration, Exhibit A, WC Docket No. 12-375 (July 16, 2015). Pay Tel presumes that use of confidential data in an anonymized fashion would not, standing alone, violate the Protective Order. However, it also appears that the unredacted data could potentially be pared with other public data to lead to the indirect disclosure of confidential information. For its part, GTL does not specifically explain how Mr. Baker's use of the anonymized data constituted a violation of the Protective Order, but rather simply asserts that it does. Certainly it is clear, however, that if the filing did include confidential information, Mr. Baker did not follow the appropriate procedures to ensure protection of confidentiality.

⁸ Global Tel*Link Corp., Motion for Sanctions, at 2, WC Docket No. 12-375 (July 16, 2015).

Commission-sponsored ICS workshop in 2014, and submitting various filings in the proceeding. Certainly Commission imposition of further sanctions under these facts could chill future participation of state agency representatives in FCC proceedings, including those that impact state concerns.

Additionally, Pay Tel would note GTL's lack of "clean hands" with regards to strict adherence to the Protective Order. As the Commission is aware, GTL has refused to provide Pay Tel's outside regulatory counsel access to its confidential data,⁹ despite the fact that the Protective Order explicitly calls for the disclosure of confidential information to counsel.¹⁰ GTL's actions have prejudiced Pay Tel's ability to advocate for its interests in this proceeding, have caused inefficient and unnecessary barriers to be placed between its legal advisors and its economic consultant, and have caused Pay Tel to incur unnecessary expense in advocating for compliance with the Protective Order.¹¹

Pay Tel does not wish to minimize the gravity of the situation, nor does Pay Tel, by this filing, waive its claim to confidentiality as to any confidential cost data or other proprietary information it has submitted pursuant to the Protective Order or otherwise in this proceeding, including any data which Mr. Baker inadvertently disclosed. But, at least as regards Pay Tel's interests, the sanctions issued to this point, along with the actions taken by the Alabama PSC, are adequate in this instance in light of the circumstances outlined above.

⁹ See, e.g., Global Tel*Link Corp., Objection to Disclosure of Confidential Information, at 6-7, WC Docket No. 12-375 (Sept. 12, 2014) (falsely claiming that Pay Tel's outside regulatory counsel "plays an important role in the company's Competitive Decision-Making process").

¹⁰ Protective Order, at ¶¶ 6-8, 13 (permitting counsel to review Stamped Confidential Documents provided Acknowledgment of Confidentiality has been executed).

¹¹ Even where GTL has been willing to provide access to confidential data, it has done so in a manner designed to impede efficient analysis and review. See, e.g., Don J. Wood, Reply Report, WC Docket No. 12-375 (dated Sept. 25, 2015) (public, redacted version) ("It is important to note that unlike most other ICS providers who provided their response to the Mandatory Data Collection template in excel format, GTL produced its confidential data to other parties only in printed form (with data tables in an approximately 5 pt. type size).").

Dated: October 1, 2015

Respectfully submitted,

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